CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.

PRINCIPAL BENCH - COURT No. II

Excise Appeal No.58581 of 2013-EX[DB]

(Arising out of Order-in-Appeal No. 42-CE/MRT-I/2013 dated 25/03/2013 passed by the Commissioner (Appeals), Central Excise, Meerut-I)

M/s. API Motors (P) Ltd. **Appellant**
Khasra No.195, Industrial Area,
Bhagwanpur, Roorkee,
Haridwar (Uttarakhand)

versus

Commissioner of Central Excise, **Respondent**
Mangal Pandey Nagar,
Meerut (U.P.).

APPEARANCE:

Shri Alok Arora, Advocate for the appellant.
Shri H.C. Saini, Authorised Representative for the Respondent.

CORAM: **Hon'ble Mr. Anil Choudhary, Member (Judicial)**
Hon'ble Mr. Bijay Kumar, Member (Technical)

FINAL ORDER NO.50757/2019

DATE OF HEARING: 27.11.2018
DATE OF DECISION: 29.05.2019

ANIL CHOUDHARY:

The present appeal is filed by the appellant against Order-in-Appeal No. 42-CE/MRT-I/2013 dated 25/03/2013 passed by Commissioner (Appeals), Central Excise, Meerut-I. The issue in this appeal filed by the appellant-assessee is whether the appellant is eligible for Area based exemption under Notification No.50/2003-CE dated 10.6.2003 as amended. The period of dispute is 15/06/2007 to 18/03/2008.

2. The brief facts of the case are that the appellant factory is a new factory at Khasra No.195 Ind. Area, Raipur, Bhagwanpur, Distt. Roorkee, in specified area under Notification No.50/2003-CE dated 10.6.2003 as amended & engaged in manufacture of Three Wheeler Auto Rickshaw Chassis fitted with Engine Assembly, falling under Chapter Heading 8706 of Central Excise Tariff Act 1985. The appellant factory started commercial production from 14.6.2007 and first clearance was made on 15.6.2007. The appellant inadvertently did not file the declaration with the Central Excise authorities either from start of commercial production or before effecting first clearance. The appellant filed declaration on 19.3.2008 giving all the required information. Thereafter, on calling report by the jurisdictional Assistant Commissioner, the Range Superintendent visited the appellant factory on 27.3.2008 and vide letter dated 17.4.2008 conveyed that the Commercial production started from 14.6.2007 in the specified area, notified under the said Notification, the unit being a new unit appears eligible/admissible to avail benefit of exemption of excise duty for a period of 10 years from the date of commencement of commercial production, i.e. 14.6.2007, in view of Notification No.50/2003-CE dated 10.6.2003. The department kept mum for a long period and issued Show Cause Notice dated 8.10.2011 invoking extended period. In the Show Cause Notice, it has been alleged, the appellant did not file declaration as required under said Notification before effecting first clearance, therefore benefit of exemption under the said Notification is not available for the period 15/06/2007 to 18/03/2008.

3. The appellant contested the Show Cause Notice on merits as well as on limitation. The Additional Commissioner, Central Excise, Meerut-I, vide Order dated 6.12.2012 confirmed the demand of Rs.18,75,791/- alongwith interest & imposed equal penalty. On appeal, the learned Commissioner (Appeals) vide O-in-A dated 25.3.2013, dismissed the appeal.

4. Being aggrieved by the above Order, the appellants are before this Tribunal. The learned Counsel for the appellants pleaded that for procedural omission, substantial benefit cannot be denied when the department accepts the unit is situated in specified area and manufactures goods, not in Negative List of Notification No.50/2003-CE. He submitted, the issue is no more res-integra, as similar issue is decided in favour of appellant vide decisions of this Tribunal, therefore on merits the issue is in favour of appellant. He referred & relied on the following judgments:-

(i) Final Order dated 17.8.2017 in the matter of Krsna Urja Projects Ltd. reported in 2017(12) TMI 1076.

(ii) Judgment of CESTAT, New Delhi in the matter of Indica Industries Pvt. Ltd. Vs CCE & ST Dehradun reported in 2016 (11) TMI 696-CESTAT New Delhi, decided in favour of party.

Against the above judgment, the revenue filed Civil Appeal before Hon'ble Supreme Court. The Hon'ble Supreme Court vide judgment dated 12.1.2018 has held – "We find no merit in the present appeal.

(iii) Judgment of Hon'ble CESTAT, New Delhi in the matter of Controls and Switchgears Company Ltd. Vs CCE Meerut and Vice Versa reported in 2017-TIOL-1960 – CESTAT-DEL.

(iv) Final Order No. A/57718/2017-EX(DB) dated 6.11.2018 of Hon'ble CESTAT, New Delhi in the matter of A.D. Auto parts Industries.

4.1 The counsel for the appellant further submitted, the demand is time barred as on receipt of declaration, the Range Superintendent visited the factory and vide report dated 17.4.2008 recommended for grant of area based exemption, for 10 years. Therefore, the demand Show Cause Notice, invoking extended period is barred by limitation.

5. The learned DR for the revenue supported the Order and submitted that the Order denying benefit of exemption, confirming demand & imposing penalty is justified.

6. Having considered the rival submissions made by both sides, we find, it is undisputed fact that while the appellant assessee started availing of exemption from 15.6.2007, when the first clearance was made, they filed the declaration on 19.3.2008. There is no dispute that the goods being manufactured are not in the negative list of Annexure-I, and the unit is located in the specified Industrial Area mentioned in Annexure-II to the Notification No.50/2003-CE. Since, the declaration has been made by the appellants themselves on 19.3.2008 and the same is correct, the jurisdictional Central Excise Authorities should have examined the question regarding the appellant company's eligibility for exemption during the period prior to 19.3.2008, but they chose to sleep over the declaration and issued a Show Cause Notice on 8.10.2011. The appellant cannot be charged with suppression or mis-statement for more than three years long delay in issue

of Show Cause Notice. The proviso to sub-Section 11A(1) cannot be invoked by the department. Hence, we hold the demand Show Cause Notice is time barred and the impugned Order is not sustainable on the ground of limitation. Further, we hold the issue on merits is in favour of the appellant, as held by this Tribunal in judgments, as mentioned in para 4 above. Accordingly, we allow the appeal with consequential benefits to the appellant. Impugned order is set aside.

(Pronounced on 29.05.2019).

(Anil Choudhary)
Member (Judicial)

(Bijay Kumar)
Member (Technical)

Pant